

SENATE BILL NO. 521

INTRODUCED BY J. ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN ALTERNATIVE MINIMUM CORPORATION FEE COMPUTED ON A CORPORATION'S BOOK ~~PROFIT~~ INCOME; AMENDING SECTIONS 15-31-101, ~~AND~~ 15-31-121, AND 15-31-322, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Alternative minimum fee. (1) As an alternative to the corporate license fee, a corporation must pay, if the amount is greater than the amount of the corporate license fee required by 15-31-101, 4.75% of the corporation's book ~~profit~~ INCOME for the preceding tax year. If a corporation has income from business activity that is taxable both within and outside the state, the alternative license fee must be measured by the book ~~profit~~ INCOME derived from or attributable to Montana sources as determined under part 3 of this chapter.

(2) THE ALTERNATIVE MINIMUM FEE PROVIDED FOR IN SUBSECTION (1) APPLIES TO A CORPORATION WITH AT LEAST \$20 MILLION IN ANNUAL TOTAL SALES OR \$4 MILLION IN ANNUAL TOTAL PAYROLL REGARDLESS OF WHETHER THE CORPORATION HAS MADE A WATER'S-EDGE ELECTION.

~~(2)(3)~~ For the purposes of this section, "~~book profit~~" "BOOK INCOME" means the amount of ~~profit~~ INCOME determined for book purposes by applying U.S. generally accepted accounting principles for worldwide income. If a taxpayer, in the ordinary course of its business, keeps books for reporting financial results to shareholders, creditors, or regulators on a basis other than U.S. generally accepted accounting principles and does not maintain U.S. generally accepted accounting principles books for any purpose, then the taxpayer may determine the amount of book ~~profit~~ INCOME for the purposes of this section by using the books maintained by the taxpayer, provided the books are kept on the same basis consistently from year to year. ~~Adjustment to any reserves for taxes are disregarded for purposes of determining book profit.~~ FOR THE PURPOSES OF THIS SECTION, "ANNUAL" MEANS THE PERIOD AS REPORTED ON SECURITIES AND EXCHANGE COMMISSION FORM 10-K OR AMENDED 10-K.

Section 2. Section 15-31-101, MCA, is amended to read:

1 **"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes an association,
2 joint-stock company, common-law trust or business trust that does business in an organized capacity, all other
3 corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations
4 of trust of any state, country, or the United States, and any limited liability company, limited liability partnership,
5 partnership, or other entity that is treated as an association for federal income tax purposes and that is not a
6 disregarded entity.

7 (2) The terms "engaged in business" and "doing business" both mean actively engaging in any
8 transaction for the purpose of financial or pecuniary gain or profit.

9 (3) Except as provided in 15-31-103, [section 1], or 33-2-705(4) or as may be otherwise specifically
10 provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer
11 as a license fee for the privilege of carrying on business in this state the percentage or percentages of its total
12 net income for the preceding taxable year at the rate set forth in this chapter. In the case of corporations having
13 income from business activity which is taxable both within and outside of this state, the license fee must be
14 measured by the net income derived from or attributable to Montana sources as determined under part 3. Except
15 as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the
16 taxable year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of
17 the taxable year in which the income was earned and is for the privilege of carrying on business in this state for
18 the taxable year in which the income was earned.

19 (4) Every bank organized under the laws of the state of Montana, of any other state, or of the United
20 States and every savings and loan association organized under the laws of this state or of the United States is
21 subject to the Montana corporation license tax provided for under this chapter. A foreign capital depository
22 chartered under the laws of Montana is not subject to the Montana corporation license tax provided for under
23 this chapter until October 1, 2012. For taxable years beginning on and after January 1, 1972, this subsection is
24 effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

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26 **Section 3.** Section 15-31-121, MCA, is amended to read:

27 **"15-31-121. Rate of tax -- minimum tax -- distribution of revenue.** (1) Except as provided in
28 subsection (2), the percentage of net income to be paid under 15-31-101 is 6 3/4% of all net income for the tax
29 period.

30 (2) ~~For~~ EXCEPT AS PROVIDED IN [SECTION 1], FOR a taxpayer making a water's-edge election, the

percentage of net income to be paid under 15-31-101 is 7% of all taxable net income for the tax period.

(3) Each corporation subject to taxation under this part shall pay a minimum tax ~~of that is the greater~~ of the license fee determined under 15-31-101 or the alternative minimum fee under [section 1] but not less than \$50.

~~(4) For fiscal year 2005, the tax collected from water's-edge corporations must be deposited as follows:~~

~~—— (a) \$375,000 in the state special revenue fund to the credit of the department of public health and human services for state matching funds to maximize federal funds for medicaid health services; and~~

~~—— (b) the balance in the state general fund."~~

SECTION 4. SECTION 15-31-322, MCA, IS AMENDED TO READ:

"15-31-322. Water's-edge election -- inclusion of tax havens. (1) Notwithstanding any other provisions of law, except for [section 1], a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

(a) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in 26 U.S.C. 1501 through 1505 that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1)(a), the 80% stock ownership requirements of 26 U.S.C. 1504 must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(b) domestic international sales corporations, as described in 26 U.S.C. 991 through 994, and foreign sales corporations, as described in 26 U.S.C. 921 through 927;

(c) export trade corporations, as described in 26 U.S.C. 970 and 971;

(d) foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under 26 U.S.C. 897;

(e) a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States; or

(f) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven, including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda,

1 British Virgin Islands, Cayman Islands, Cook Islands, Turks and Caicos Islands, Dominica, Gibraltar, Grenada,
2 Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Maldives, Marshall Islands,
3 Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, Seychelles, St. Kitts and Nevis, St.
4 Lucia, St. Vincent and the Grenadines, Tonga, U.S. Virgin Islands, and Vanuatu.

5 (2) The department shall report biennially to the revenue and transportation interim committee with an
6 update of countries that may be considered a tax haven under subsection (1)(f)."

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8 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an
9 integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 1].

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11 **NEW SECTION. Section 6. Effective date.** [This act] is effective January 1, 2006.

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13 **NEW SECTION. Section 7. Applicability.** [This act] applies to tax years beginning after December
14 31, 2005.

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